STATE OF MICHIGAN

COURT OF APPEALS

LEASE CORPORATION OF AMERICA, Plaintiff-Appellee, v EZ THREE COMPANY, L.L.C., and SHARON OAKES, Defendants, and DORIS BARNES, Defendant-Appellant.	UNPUBLISHED October 4, 2011 No. 297704 Oakland Circuit Court LC No. 2009-100609-CZ

Before: RONAYNE KRAUSE, P.J., and CAVANAGH and JANSEN, JJ.

PER CURIAM.

Defendant, Doris Barnes (Barnes), appeals as of right an order that granted summary disposition and a judgment in plaintiff's favor in this contract dispute. We affirm.

Barnes and two friends, including defendant Sharon Oakes, established EZ Three Company, LLC (EZ Three) in Texas for the purpose of opening a restaurant. Toward that end, EZ Three entered into an equipment lease agreement, dated July 25, 2007, with First Vision Financial, LLC, a company in Texas. At the top of the lease agreement were instructions and a note stating: "If you have any questions, call us in Michigan at 1-800-800-8098."[1] Barnes, as a member of EZ Three, signed the equipment lease agreement in three places. First, Barnes signed the provision pertaining to the equipment acceptance and purchase authorization. Second, Barnes signed the provision of the lease which stated that she received a completed copy of the lease. That provision also stated: "You acknowledge that you have read, understood and have

[1] The equipment lease agreement form contained a notation on the bottom indicating that the form was copyrighted by plaintiff, Lease Corporation of America.

agreed to all the terms of the Lease and have consulted with your attorney if you have any legal questions about the Lease." Paragraph one of the lease provided:

> In return for our purchase of your chosen equipment . . . and in return for your promises, representations and commitments, including, without limitation, your submission to Michigan law and courts, we agree to lease to you and you agree to lease from us the Equipment . . . .

Paragraph three of the lease provided:

> **Law, Jurisdiction, Venue and Non-Jury Trial**: You agree that this Lease shall be deemed executed and performed in Michigan and Michigan law will apply to it. . . . **YOU ALSO CONSENT TO THE PERSONAL JURISDICTION OF THE STATE OF MICHIGAN** and any state or federal court located there. **YOU AGREE TO ACCEPT VENUE IN ANY FEDERAL OR STATE COURT IN MICHIGAN, AND WAIVE ANY RIGHT TO A TRIAL BY JURY SO THAT ANY TRIAL RELATED TO THIS LEASE SHALL BE BY AND ONLY TO THE COURT.** [Emphasis in original.]

Third, Barnes signed the guaranty provision of the lease agreement as a personal guarantor, as did Oakes. That guaranty provision stated:

> In consideration for us entering into the lease, you, the guarantor, guaranty that the Lessee will make all payments, pay all other charges under this Lease when due, and will perform all other obligations promptly. **You also agree to be subject to all provisions of this lease, including, but not limited to, the consent to Michigan law, jurisdiction and the venue of Michigan courts and the waiver of a trial by jury.** [Emphasis in original.]

Barnes also initialed two provisions of the equipment lease agreement, including the provision that provided: "This Agreement cannot be canceled nor modified except by written agreement signed by you and by us."

And Barnes executed a document, dated July 25, 2007, titled "Equipment Acceptance and Authorization" which referenced the "Lease agreement between Lessee and LCA Bank Corporation or our affiliate Lease Corporation of America." The document certified that the equipment referred to in the lease had been delivered to the lessee and that the lessor was authorized to purchase the equipment. Barnes also executed a document titled "Certificate of Ownership Interest" which stated that she was providing the document "as a material inducement to LCA Bank Corporation, and or its affiliate, Lease Corporation of America ("LCA") to extend credit and make other financial accommodations to EZ Three Company, LLC." In June, Barnes had executed an authorization and agreement for electronic fund transfers which referenced the lease and indicated that the bank was authorized to debit "amounts due under this lease." The Lessor was set forth as plaintiff, Lease Corporation of America, and its address was Troy, Michigan.

On July 31, 2007, an assignment agreement was entered into between First Vision Financial, LLC and plaintiff, Lease Corporation of America. First Vision Financial assigned the

equipment lease agreement it had with EZ Three, to plaintiff, and it also assigned to plaintiff its rights related to an invoice issued by Texas P.O.S., Inc., the company that apparently provided the equipment to EZ Three.

On May 7, 2009, plaintiff filed its complaint in Oakland Circuit Court against EZ Three, Barnes, and Oakes for default of the lease equipment agreement. Plaintiff averred that, pursuant to the terms of the lease (1) the dispute was governed by Michigan law, (2) defendants consented to jurisdiction in Michigan, and (3) defendants consented to venue in any Michigan court. In Count I, plaintiff alleged a breach of lease/account stated claim, alleging that defendants were in default of the lease because of their failure to pay the required lease payments, late charges, accelerated future rent payments, liquidated damages, taxes, attorney fees, and other amounts specifically set forth totaling $32,157.75. Count II was a claim of breach by guarantor Barnes and Count III was a claim of breach by guarantor Oakes. Attached to the complaint were the lease documents, and an affidavit of account.

On July 9, 2009, Barnes and Oakes responded to the complaint, *in propria persona*, and objected to personal jurisdiction and venue. They acknowledged that the lease agreement provided that any lawsuits would be brought in Michigan, but claimed that at the time the agreement was executed they were not informed of that lease term. Further, they argued, MCL 600.745(2)(b) required that Michigan be "a reasonably convenient place for the trial of the action" and it was not a reasonably convenient place for them because they lived in Texas and did not have the financial means to defend this action in Michigan. Accordingly, Barnes and Oakes objected to personal jurisdiction and requested that the action be transferred to a venue in Texas. Barnes and Oakes also denied many of the allegations set forth in plaintiff's complaint indicating, primarily, that they never signed a lease agreement with plaintiff—they signed the agreement with First Vision Financial and were unaware of plaintiff's involvement until September 4, 2008.

On July 20, 2009, a default was entered against defendant EZ Three and, on August 11, 2009, a default judgment was entered in the amount of $32,592.75.

On October 6, 2009, plaintiff filed a motion requesting the court to deem that personal jurisdiction over these defendants was appropriate and that the venue in the Oakland Circuit Court was proper. Barnes and Oakes opposed the motion, arguing primarily that they never signed a lease agreement with plaintiff and they did not know that the lease agreement provided that all lawsuits would be filed in Michigan but, in any case, Michigan was not a "reasonably convenient place for trial" as required under MCL 600.745(2)(b) because they lived in Texas and did not have the financial ability to defend a case filed in Michigan.

On November 18, 2009, oral arguments were conducted. Barnes participated in the hearing by telephone. Plaintiff argued that its principal place of business was in Michigan, all of the documents involving the alleged breach were in Michigan, employees involved in the agreement were in Michigan, and the only issue to be resolved was the amount of money Barnes and Oakes had to pay as a consequence of their breach. Barnes argued that plaintiff is a multi-million dollar business, it had an office in Texas, and paid taxes in Texas. Barnes asserted that neither she nor Oakes had contact with Michigan and could not afford to come to Michigan to defend the lawsuit. Further, Barnes argued, the lease agreement was between EZ Three, a Texas

limited liability company, and First Vision Financial, a Texas limited liability company, not plaintiff. The court asked Barnes why Michigan was not a reasonably convenient forum to adjudicate this matter and Barnes replied that neither she nor Oakes could afford to come to Michigan. The court held that the statute only refers to convenience as relates to the witnesses, evidence, and parties and, thus, jurisdiction in Michigan was proper. Accordingly, the circuit court entered an order granting plaintiff's motion to deem jurisdiction and venue appropriate in Oakland Circuit Court.

On March 10, 2010, plaintiff filed a motion for summary disposition pursuant to MCR 2.116(C)(9) and (C)(10) against Barnes and Oakes. Plaintiff primarily argued that these defendants, as personal guarantors, were liable on the lease that they personally guaranteed which was in default. Thus, plaintiff requested a judgment in the amount of $32,157.75, as well as costs, interest, and attorney fees.

Barnes and Oakes did not file a response to the motion for summary dismissal, but provided a letter to the court requesting a postponement of the hearing to afford them the opportunity to participate. The request for adjournment was denied and the hearing was conducted without their participation. Plaintiff's motion for summary disposition was granted and a judgment was entered against Barnes and Oakes in the amount of $32,157.75. This appeal by Barnes followed.

First, Barnes argues that the circuit court erred in concluding that it could assert personal jurisdiction over her, a nonresident of Michigan, in this forum that was not reasonably convenient. We disagree.

Whether a Michigan court can exercise personal jurisdiction over a nonresident party is reviewed de novo as a question of law. *Lease Acceptance Corp v Adams*, 272 Mich App 209, 218; 724 NW2d 724 (2006); *Oberlies v Searchmont Resort, Inc*, 246 Mich App 424, 426; 633 NW2d 408 (2001). However, a trial court's decision that Michigan is a "reasonably convenient" place for trial under MCL 600.745(2)(b) is reviewed for an abuse of discretion. *Lease Acceptance Corp*, 272 Mich App at 223.

Two inquiries are made with regard to the issue whether personal jurisdiction is proper: (1) does a long-arm statute provide personal jurisdiction over the defendant; and (2) does the exercise of jurisdiction violate due process. *WH Froh, Inc v Domanski*, 252 Mich App 220, 226; 651 NW2d 470 (2002). Because this case involves a contractual forum-selection clause, the relevant long-arm statute is MCL 600.701, which provides:

> The existence of any of the following relationships between an individual and the state [of Michigan] shall constitute a sufficient basis of jurisdiction to enable the courts of record of this state to exercise general personal jurisdiction over the individual . . . and to enable such courts to render personal judgments against the individual . . . .
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> * * *
>
> (3) Consent, to the extent authorized by the consent and subject to the limitations provided in section 745.

Here, the lease agreement that Barnes signed clearly included a conspicuous forum-selection clause. See *Lease Acceptance Corp*, 272 Mich App at 219-221. Although Barnes argued that she did not read the lease agreement before signing it, she remains bound by its terms. "[T]he law is clear that one who signs an agreement, in the absence of coercion, mistake, or fraud, is presumed to know the nature of the document and to understand its contents, even if he or she has not read the agreement." *Lease Acceptance Corp*, 272 Mich App 221. Accordingly, Barnes consented to personal jurisdiction in Michigan and Michigan courts have general personal jurisdiction over Barnes, unless the requirements of MCL 600.745 are not satisfied.

MCL 600.745 provides:

> (2) If the parties agreed in writing that an action on a controversy may be brought in this state and the agreement provides the only basis for the exercise of jurisdiction, a court of this state shall entertain the action if all of the following occur:
>
> (a) The court has power under the law of this state to entertain the action.
>
> (b) This state is a reasonably convenient place for the trial of the action.
>
> (c) The agreement as to the place of the action is not obtained by misrepresentation, duress, the abuse of economic power, or other unconscionable means.
>
> (d) The defendant is served with process as provided by court rules.

If one of these elements is not satisfied, the contractual agreement regarding jurisdiction in Michigan is unenforceable. Barnes does not dispute the satisfaction of subsection (2)(a), and she admitted below that she was served with process as set forth in (2)(d). Therefore, the dispute focuses on subsections (2)(b) and (2)(c).

Barnes argued in the circuit court and argues here on appeal that Michigan is not a reasonably convenient place for trial because she has no contacts with Michigan, lives 1355 miles from Pontiac, Michigan "and traveling that far is certainly not convenient, comfortable, and/or affordable for this 73 year old Texas retired public school educator." However, in *Lease Acceptance Corp*, 272 Mich App at 225-226, this Court held that "a determination of what is a 'reasonably convenient' place for trial requires a determination whether Michigan is a logical venue that is well-suited for the purpose of deciding this action." The Court then held that the factors set forth in *Cray v General Motors Corp*, 389 Mich 382, 395-396; 207 NW2d 393 (1973) provide a useful, but not mandatory, framework for evaluating the matter. Those factors include:

> (1) the private interest of the litigants, including the location of the parties, ease of access to sources of proof, the distance from the incident giving rise to the litigation, and other practical problems that contribute to the ease, expense, and expedition of the trial; (2) matters of public interest, including consideration of which state law will govern the case, potential administrative difficulties, and people concerned by the proceeding; and (3) reasonable promptness on the part of

> the defendants in raising the issue of forum non conveniens dismissal. [*Lease Acceptance Corp*, 272 Mich App at 226-227.]

Here, the circuit court did not abuse its discretion when it held that Michigan is a reasonably convenient place for the trial in this matter. Although Barnes does not live in Michigan, plaintiff's place of business is in Michigan, the evidentiary proofs are in Michigan, plaintiff's employees who were involved in this matter are in Michigan, and Michigan law applies to this case. And the forum-selection clause was valid and conspicuous, as well as enforceable against Barnes, who freely signed the agreement consenting to personal jurisdiction in the courts of Michigan.

And the requirement set forth in MCL 600.745(2)(c) is also satisfied. There is no evidence that the "agreement as to the place of the action" was obtained by misrepresentation, duress, the abuse of economic power, or other unconscionable means. Although Barnes appears to suggest on appeal that First Vision Financial completed EZ Three's credit application in a fraudulent manner with regard to the various ownership interests, such argument fails because it does not address the "agreement as to the place of the action." That is, Barnes presented no evidence that she was induced to agree to the forum-selection clause by any untoward means. Also without merit is Barnes' argument that jurisdiction fails because First Vision Financial was not permitted to assign the lease agreement to plaintiff. Again, this argument does not address the "agreement as to the place of the action." The forum-selection clause was plainly apparent and its terms were repeated throughout the lease agreement, regardless of which entity held the lease. That is, even if First Vision Financial was suing Barnes, the lawsuit could be litigated in Michigan and Michigan law would apply. Therefore, MCL 600.745(2) is satisfied, and the circuit court "shall" entertain the action. MCL 600.745(2).

Further, we conclude that the exercise of jurisdiction by a Michigan court would not violate Barnes' due process rights; thus, personal jurisdiction is proper. "State and federal courts are virtually uniform in the conclusion that enforcement of a forum selection clause that was validly entered into does not violate due process as long as the party will not be deprived of its day in court." *Lease Acceptance Corp*, 272 Mich App at 229. Although Barnes appears to argue that litigating this case in Michigan would cause her financial hardship and would be inconvenient, she has presented no evidence of any grave difficulty or circumstance suggesting that she would be deprived her day in court if the matter was litigated in Michigan as required by the lease agreement. See *id*. at 229-230.

Next, Barnes argues that the circuit court erred when it granted plaintiff's motion for summary disposition and a judgment in the amount of $32,157.75. After de novo review of the summary dismissal decision, we disagree. See *Glass v Goeckel*, 473 Mich 667, 676; 703 NW2d 58 (2005).

On March 10, 2010, plaintiff moved for summary disposition under MCR 2.116(C)(9) and MCR 2.116(C)(10). Under MCR 2.116(C)(9), a motion for dismissal is properly granted if the opposing party has failed to state a valid defense to the claim asserted. The motion tests the legal sufficiency of a defense by the pleadings alone. *Slater v Ann Arbor Public Schools Bd of Ed*, 250 Mich App 419, 425; 648 NW2d 205 (2002). Under MCR 2.116(C)(10), a motion for dismissal is properly granted if, after review of all admissible evidence submitted, the evidence

fails to establish a genuine issue as to any material fact. *Id*. Although the court granted the motion without reference to either subrule, the dismissal was proper under MCR 2.116(C)(10).

Barnes first appears to argue that the court improperly held the hearing on the motion although she requested a postponement. The hearing was scheduled for April 7, 2010, and by request dated April 1, 2010, Barnes did send a "request to postpone the hearing." Barnes stated that neither she nor Oakes would be available "due to a prior commitment that cannot be changed at this late date." Plaintiff objected to the request for postponement and Barnes responded to the objection the day before the scheduled hearing, alleging that she did not receive the motion or notice for the previously scheduled, but postponed, hearing date. Barnes claimed that she and Oakes "were out of town and without access to the internet." Pursuant to MCR 2.503(D)(1), it was within the court's discretion to grant an adjournment "to promote the cause of justice." However, in light of the lack of information or evidence before the court, we cannot conclude that it abused its discretion, i.e., reached a result outside the range of principled outcomes, in denying the request for adjournment. See *Heaton v Benton Constr Co*, 286 Mich App 528, 538; 780 NW2d 618 (2009).

And the motion for summary dismissal was properly granted. Plaintiff's complaint alleged breach of lease/account stated and that Barnes, as personal guarantor of the lease, defaulted on her obligations under the guaranty provision. Barnes admitted in her response to the complaint that the terms of the lease were breached by nonpayment and that she and Oakes "have told Lease Corporation of America they would try to pay some of the money owed under the terms of the contract and have submitted four (4) settlement offers." Plaintiff's complaint included a detailed account of the monies owed, as well as an affidavit of account. Pursuant to MCL 600.2145, the affidavit of account is deemed prima facie evidence of such indebtedness unless the defendant answers the complaint with an affidavit denying the account. See *Echelon Homes, LLC v Carter Lumber Co*, 261 Mich App 424, 429-430, 435; 683 NW2d 171 (2004), rev'd in part on other grounds 472 Mich 192 (2005). The affidavit attached to Barnes' answer to the complaint did not deny the account, but referenced various attempts to settle the account with plaintiff. Accordingly, the motion for dismissal under MCR 2.116(C)(10) was properly granted, there being no genuine issue of any material fact.

Affirmed.

/s/ Amy Ronayne Krause
/s/ Mark J. Cavanagh
/s/ Kathleen Jansen